

Supreme Court, U. S.

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IN THE

SUPREME COURT of the UNITED STATES

MICHAEL RODAN, JR., CLERK

OCTOBER TERM, 1976

NO. 76-6544

ROBERT LEE PARKER
Petitioner

versus

SOUTH LOUISIANA CONTRACTORS, INC.,
SOLOCO PIPELINE CONTRACTORS, INC.,
MARTIN EXPLORATION CORPORATION AND
H. J. SERRETTE
Respondents

PETITION FOR A WRIT OF CERTIORARI
TO THE UNITED STATES COURT OF
APPEALS FOR THE FIFTH CIRCUIT

KOERNER, BABST & LAMBERT
A Professional Law Corporation
LOUIS R. KOERNER, JR.
STEVEN B. WITMAN
730 Camp Street
New Orleans, LA 70130
(504) 581-9569

DREWETT, JACQUES AND THOMAS
ROBERT T. JACQUES, JR.
625 Kirby Street
P. O. Box 1883
Lake Charles, Louisiana
(318) 433-4674

Counsel for Petitioner

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PETITION FOR A WRIT OF CERTIORARI
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Petitioner, Robert Lee Parker,
respectfully prays that a writ of
certiorari issue to review the United
States Court of Appeals for the Fifth
Circuit entered in this proceeding on
August 16, 1976.

OPINION BELOW

The judgment of the Court of Appeals was rendered with a written opinion on August 16, 1976. Rehearing and Rehearing En Banc were denied on September 17, 1976. The written opinion of the Court of Appeals for the Fifth Circuit is attached in the appendix hereto.

JURISDICTION

The judgment of the Court of Appeals for the Fifth Circuit was entered on August 16, 1976. A timely petition for rehearing and rehearing en banc was denied on September 17, 1976. A motion to stay issuance of the mandate was filed on September 24, 1976. This Court's jurisdiction is invoked under 28 USC Section 1254 (1) and 28 USC Section 2101.

QUESTIONS PRESENTED

1. Whether the District Court erred in failing to recognize jurisdiction predicated upon the Admiralty and General Maritime Law under 28 USC Section 1333.

2. Whether the District Court erred in

failing to recognize jurisdiction predicated upon the 1972 amendment to the Longshoremen's and Harbor Workers' Compensation Act.

3. Whether the District Court erred in failing to recognize jurisdiction predicated upon the Admiralty Extension Act, 46 USC Section 740.

4. Whether the District Court erred in failing to recognize jurisdiction predicated upon 28 USC 1337.

REGULATIONS AND STATUTORY PROVISIONS INVOLVED

28 U.S.C. 1337

The district courts shall have original jurisdiction of any civil action or proceeding arising under any Act of Congress regulating commerce or protecting trade and commerce against restraints and monopolies.

33 U.S.C. 901 et seq., Longshoremen's and Harbor Worker's Compensation Act

Section 903. Coverage

(a) Compensation shall be payable under this chapter in respect of disability or death of an employee, but only if the disability or death results

from an injury occurring upon the navigable waters of the United States (including any adjoining pier, wharf, dry dock, terminal, building way, marine railway, or other adjoining area customarily used by an employer in loading, unloading, repairing, or building a vessel). No compensation shall be payable in respect of the disability or death of--

(1) A master or member of a crew of any vessel, or any person engaged by the master to load or unload or repair any small vessel under eighteen tons net; or

(2) An officer or employee of the United States or any agency thereof or of any State or foreign government, or of any political subdivision thereof.

(b) No compensation shall be payable if the injury was occasioned solely by the intoxication of the employee or by the willful intention of the employee to injure or kill himself or another.

46 U.S.C. 688, Jones Act

Any seaman who shall suffer personal injury in the course of his employment may, at his election, maintain an action for damages at law, with the right of trial by jury, and in such action all statutes of the United States modifying or extending the common-law right or remedy in cases of personal injury to railway employees shall apply; and in case of death of any seaman as a result of any such personal injury the personal representative of such seaman may maintain an action for damages at law with the right of

trial by jury, and in such action all statutes of the United States conferring or regulating the right of action for death in the case of railway employees shall be applicable. Jurisdiction in such actions shall be under the court of the district in which the defendant employer resides or in which his principal office is located.

46 U.S.C. 740, Admiralty Extension Act

The admiralty and maritime jurisdiction of the United States shall extend to and include all cases of damage or injury, to person or property, caused by a vessel on navigable water, notwithstanding that such damage or injury be done or consummated on land.

In any such case suit may be brought in rem or in personam according to the principles of law and the rules of practice obtaining in cases where the injury or damage has been done and consummated on navigable waters: Provided, That as to any suit against the United States for damage or injury done or consummated on land by a vessel on navigable waters, the Public Vessels Act or Suits in Admiralty Act, as appropriate, shall constitute the exclusive remedy for all causes of action arising after June 19, 1948, and for all causes of action where suit has not been hitherto filed under the Federal Tort Claims Act: Provided further, That no suit shall be filed against the United States until there shall have expired a period of six months after the claim has been

presented in writing to the Federal agency owning or operating the vessel causing the injury or damage.

46 U.S.C. 1101 et seq., Merchant Marine Act of 1936

It is necessary for the national defense and development of its foreign and domestic commerce that the United States shall have a merchant marine (a) sufficient to carry its domestic water-borne commerce and a substantial portion of the water-borne export and import foreign commerce of the United States and to provide shipping service essential for maintaining the flow of such domestic and foreign water-borne commerce at all times, (b) capable of serving as a naval and military auxiliary in time of war or national emergency, (c) owned and operated under the United States flag by citizens of the United States, insofar as may be practicable, (d) composed of the best-equipped, safest, and most suitable types of vessels, constructed in the United States and manned with a trained and efficient citizen personnel, and (e) supplemented by efficient facilities for shipbuilding and ship repair. It is declared to be the policy of the United States to foster the development and encourage the maintenance of such a merchant marine.

46 U.S.C. 1300 et seq., 1309 (e), Carriage of Goods by Sea Act Section 1 et seq., 1 (e)

Section 1302. Duties and rights of carrier

Subject to the provisions of section 1306 of this title, under every contract of carriage of goods by sea, the carrier in relation to the loading, handling, stowage, carriage, custody, care, and discharge of such goods, shall be subject to the responsibilities and liabilities and entitled to the rights and immunities set forth in sections 1303 and 1304 of this title.

STATEMENT OF THE CASE

On August 5, 1974, petitioner Robert Lee Parker was employed by Atlas Truck Lines, Inc. as a truck driver. He was instructed to deliver a truck load of pipe casing to respondent Martin Exploration Corporation at the Butte-LaRose landing on the Atchafalaya River. Upon the request of employees of the respondents, Mr. Parker drove the truck onto a barge leased and/or owned either by respondent South Louisiana Contractor's, Inc. or Soloco Pipeline Contractors, Inc. The barge with the truck driven by petitioner and another truck on it was then moved at night to a

landing on the River which was leased and/or owned by Martin Exploration Corporation by means of a tug leased and/or owned by either South Louisiana Contractors, Inc. or by Soloco Pipeline Contractors, Inc.

The barge and tug arrived at the landing at approximately 11:20 P.M. Petitioner was requested to and did assist the employees of the respondents in mooring the vessel and in preparing the landing ramp for the egress of the Atlas trucks loaded on the barge. Mr. Parker left the barge and went onto the ramp and up to the elevation of the river bank, and then was requested to and did help in operating the winches which were used to lower the ramp apron. All of this was done under the direction of employees of the respondents. In the process of doing this, the petitioner fell into an unilluminated gap in the ramp, which initiated a severe injury to his right

foot and the other injuries which have been asserted in this litigation.

Subsequent to this injury, petitioner was taken by crewboat owned by H. J. Serrette to Whiskey Bay Landing, after having been required to crawl off of the barge and onto the crewboat and later being required to crawl off of the crewboat and onto the top of the Whiskey Bay levee and then over the crushed shell parking lot to an automobile, all without assistance. The crewboat lacked proper medical gear. All of this aggravated his injuries.

On August 27, 1974, petitioner filed his complaint in the United States District Court for the Eastern District of Louisiana against respondents South Louisiana Contractors, Inc., Soloco Pipeline Contractors, Inc., Martin Exploration Corporation and H. J. Serrette to recover damages for the injuries sustained in the accident of

August 5, 1974 and the subsequent trip to obtain medical attention.

After a pretrial conference had been held at which the alleged jurisdictional issue was first raised, respondent South Louisiana Contractors, Inc. and Soloco Pipeline Contractors, Inc. moved to dismiss and for summary judgment. Oral argument was presented before the Honorable Lansing L. Mitchell, District Judge, on February 19, 1975. Said motion was granted without written reasons as to all respondents, and final judgment was signed on February 20, 1975.

Notice of Appeal was filed by petitioner on March 20, 1975. The oral argument was held on May 10, 1976. The Court affirmed with written opinion on August 16, 1976. On September 17, 1976 the petition for rehearing and rehearing en banc was denied.

REASONS FOR GRANTING THE WRIT

I. A CONFLICT EXISTS BETWEEN THE UNITED STATES COURT OF APPEALS FOR THE FIRST AND FIFTH CIRCUITS AS TO WHETHER AN ACCIDENT OCCURRING ON A RAMP WHICH IS THE SOLE MEANS OF INGRESS AND EGRESS FROM A VESSEL GIVES RISE TO ADMIRALTY AND GENERAL MARITIME JURISDICTION, 28 USC SECTION 1333.

Admiralty and General Maritime jurisdiction exists herein on the basis of a maritime tort. In this case, the "ramp" was used only for the purposes of driving trucks off of the barges and as the sole means of ingress and egress from vessels for crewmen and longshoremen. Although the ramps rested on land, and removing it may involve a major calling for heavy equipment, the ramp has never been used as a dock or pier in the traditional maritime sense.

In fact, the ramp was not placed on land by the owner or drilling contractor of the land-based rig. Respondents South Louisiana Contractors, Inc. were engaged in providing the transportation for

equipment, trucks, and personnel. This transportation "package" included tugs, barges, and ramps. There is no dispute in this case that a tug was used to push the barge on which rested petitioner's employer's heavy-duty truck or that a ramp was used for the unloading of said truck and as the sole means of ingress and egress for the crew members and petitioner. Therefore, the ramp was part of a package of vessels and equipment which was used in furtherance of traditional maritime activities.

Romero Reyes vs. Marine Enterprises, Inc., 494 F.2d 866 (1st Cir. 1974), a case which was cited in a letter to the Court prior to oral argument, in oral argument and in petitioner's Application for Rehearing and Rehearing En Banc, is factually indistinguishable from the present case. In Romero Reyes, supra, the plaintiff, a longshoreman, "was injured when he slipped and fell from an

allegedly unstable, poorly lit and defective gangway" while boarding a barge. The gangway was "permanently affixed to a pier-based tower and did not belong to the barge." Yet, the Court of Appeals for the First Circuit held at page 870:

"In view of the foregoing, our views on the negligence claim may be of little practical significance; however, we state them, though with perhaps less certainty. Because the means of ingress and egress, by whomever furnished, are an 'appurtenance' of the vessel, the owner has a duty of care regarding them. The owner is thus liable for a negligent failure to inspect a gangway and to warn against defects reasonably apparent from inspection or to take steps to repair or replace it."

Thus, the ramp is and must be an appurtenance of respondent's barge under the facts of this particular case. This contention is further supported by the decision in the following cases:

"Docks, wharves piers and similar structures are regarded as extensions of the land and injuries occurring there are not under the coverage of the Act. On the other hand, a gangplank, not being permanently attached to the

land, and traditionally, if not always so in fact a part of the equipment of the ship, is regarded as a part of the ship so that an injury occurring upon a gangplank is regarded as having occurred upon navigable waters. This rule has been recently extended so as to include, as being over water, a skid which was impermanently affixed to the wharf although sufficiently connected with the land as to sustain an award to an injured longshoreman under a state workmen's compensation act." O'Keefe, D.C. v. Atlantic Stevedoring Co., 354 F.2d 48 (5th Cir. 1965), 1966 A.M.C. 209, 211 (citations omitted).

"We are persuaded that the temporary skid was not part of, and should not be analogized to, the wharf. A wharf or pier is usually built on pilings over what was navigable water. When the structure is completed the water over which it is built is permanently removed from navigation as if the structure had been in the first instance built on land. In contrast, a skid like a gangplank is not a permanent structure and the waters under both are as navigable as they would be if a ship were moored in the same space and then sailed. The skid occupied the position above the water only temporarily; it was removed from its space over the water and stored until needed again, much like a gangplank. While a gangplank might be though different from a skid because it is customarily ship's equipment, to make ownership the determinative factor is to resort to a wooden criterion inappropriate to a compensation scheme. And, it is interesting in this connection to note that the Longshoremen's Act was held to apply to an injury on a gangway not owned by or

kept on the ship because it was 'used to provide ingress to and egress from the vessel.'" Michigan Mutual Liability Co. v. Arrien, 344 F.2d 640 (2nd Cir. 1965), 1965 A.M.C. 805, 809-810, cert. denied 382 U.S. 835.

On the other hand, the United States Court of Appeals for the Fifth Circuit held:

"Since Parker's accident thus occurred on a land-based structure most closely resembling a dock or pier, we conclude that his claim does not come within admiralty jurisdiction under the principals reiterated in Victory Carriers regarding extension of land. The fact that the point on the ramp where Parker fell may have been above water at the time of his injury does not alter this conclusion." Parker vs. South Louisiana Contractors, Inc., Docket No. 75-2075, page 5045 (5th Cir. 1976).

The result of these decisions is that a conflict now exists between the United States Court of Appeals for the First and Fifth Circuits as to whether an accident occurring on a ramp which is the sole means of ingress and egress from the vessel gives rise to admiralty and general maritime jurisdiction, 28 U.S.C. Section 1333. The facts of this

particular case, however, demonstrate the necessary maritime connexity to provide a maritime tort over which the Federal Courts have traditionally exercised admiralty and general maritime jurisdiction.

Furthermore, admiralty and general maritime jurisdiction also exists because petitioner's injuries were severely aggravated due to the negligent and improper method by which he was evacuated from the situs of the accident.

Subsequent to the injury, petitioner was taken by crew boat, owned and operated by respondent, H. J. Serrette, to Whiskey Bay Landing after having been required to crawl off of the barge and on to the crew boat. He was later required to crawl off the crew boat and on to the top of the Whiskey Bay Levee and over the crushed shell parking lot to an automobile all without assistance. The crew boat lacked proper medical gear.

The crew boat traveled at high speeds for an extended period of time on the Atchafalaya River, a navigable waterway. All of these unfortunate events aggravated petitioner's injuries.

The Complaint filed in the District Court properly alleges an aggravation of petitioner's injuries by virtue of maritime activity. Both the District Court and the Court of Appeals for the Fifth Circuit failed to avert to or consider these facts. Thus, even under Victory Carriers, Inc. v. Law, 404 U.S. 202, 92 S. Ct. 418, 30 L.Ed.2d 383 (1971), the aggravation of petitioner's injuries is embraced by the traditional maritime jurisdiction of the Federal District Court.

In conclusion, both petitioner's accident and aggravation thereof are embraced by the traditional admiralty and general maritime jurisdiction of the Federal Court.

II. THE LEGISLATIVE INTENT OF THE 1972 AMENDMENTS TO THE LONGSHOREMEN AND HARBOR WORKERS' COMPENSATION ACT IS TO ESTABLISH ADMIRALTY AND GENERAL MARITIME JURISDICTION FOR CASES ARISING THEREUNDER AND TO PROVIDE A CONSISTENT COMPENSATION AND THIRD PARTY PRACTICE PROCEDURE.

In Victory Carriers, Inc. v. Law,

404 U.S. 202, 92 S.Ct. 418, 30 L.Ed.2d 383 (1971), the leading example of the law as it existed prior to the 1972 amendments, the Supreme Court of the United States resisted efforts "to disturb the existing precedents and to extend shoreward the reach of the maritime law further than Congress has approved." 404 U.S. at 211. After summarizing maritime tort jurisdiction as historically construed, the Court construed the LHWCA and the Admiralty Extension Act of 1948 as being consistent with its policy of never having

"approved an unseaworthiness recovery for an injury sustained on land merely because the injured longshoreman was engaged in the process of 'loading' or

'unloading.'" 404 U.S. at 211.

In referring to the LHWCA, the Court stated that the Act provided:

"... a system of compensation for longshoremen injured on navigable waters but anticipating that dockside accidents would remain under the umbrella of state law and state workmen's compensation systems. The relative roles of state and federal law nevertheless remained somewhat confused on the seaward side of the pier. But shoreward, absent legislation, the line held fast." 404 U.S. at 208 (citations omitted).

The analysis made by this Court was undoubtedly based on the language of Section 3(a) of the Act as originally passed by Congress.

"Compensation shall be payable . . . only if the disability or death results from an injury occurring upon the navigable waters of the United States (including any dry dock) . . ." 33 U.S.C.A. 903(a).

Referring to the Admiralty Extension Act, which confers maritime jurisdiction in cases of damage or injury caused by a vessel, the Court stated:

"There is much to be said for uniform treatment of longshoremen injured while loading or unloading a ship. But even

construing the Extension Act of 1948 to amend the Longshoremen's Act would not effect this result, since longshoremen injured on a pier by pier-based equipment would still remain outside the Act." 404 U.S. at 211 citing Nacirema Operating Co. v. Johnson, 396 U.S. 212, 223, 90 S.Ct. 347, 24 L. Ed.2d 371 (1969).

The Court in Victory Carriers relied heavily on congressional legislation and the absence of remedial legislation in this area of the law. Accordingly, it is clear that Congress by enacting the amendments in 1972 legislatively overruled Victory Carriers and provided for the uniform treatment of longshoremen injured while loading or unloading a ship.

This was done in two ways: by the broadening of coverage of the Act itself and by the enactment of a specific remedy under 33 USC Section 905.

The amendments broaden coverage under Section 3(a) to include cases where the injury occurs on

"any adjoining pier, wharf, dry dock, terminal, building way, marine railway, or other adjoining area customarily

used by an employer in loading, unloading, repairing, or building a vessel." 33 USC 903(a) as amended.

The legislative history of the amendments indicates that the Federal Courts now have admiralty and maritime jurisdiction (and have always had commerce jurisdiction, see *infra*) over the causes of action asserted in the present matter. Under the heading "Extension of Coverage to Shoreside Areas", the House Committee on Education and Labor stated that:

"The present Act, insofar as longshoremen and ship builders and repairmen are concerned, covers only injuries which occur 'upon the navigable waters of the United States'. Thus, coverage of the present Act stops at the water's edge; injuries occurring on land are covered by State Workmen's Compensation laws. The result is a disparity in benefits payable for death or disability for the same type of injury depending on which side of the water's edge and in which State the accident occurs.

* * * * *

"The Committee believes that the compensation payable to a longshoreman or a ship repairman or builder should not depend on the fortuitous circumstances of whether the injury occurred on land

or over water. Accordingly, the bill would amend the Act to provide coverage of longshoremen, harbor workers, ship repairmen, ship builders, shipbreakers, and other employees engaged in maritime employment (excluding masters and members of the crew of a vessel) if the injury occurred either upon the navigable waters of the United States of any adjoining pier, wharf, dry dock, terminal, building way, marine railway, or other area adjoining such navigable waters customarily used by an employer in loading, unloading, repairing, or building a vessel.

"The intent of the Committee is to permit a uniform compensation system to apply to employees who would otherwise be covered by this Act for part of their activity." 1972 U.S. Code Cong. and Adm. News, pp. 4707-4708.

A case very much on point is

Coppolino v. International Terminal Operating Company, Inc., 1974 A.M.C. 2422

(Dept. of Labor, Benefits Review Board, 1974) in which the Board considered the amendments to the Act, at p. 2424 thusly:

"The thrust of the amendments to the Act expanding coverage for all employees in the longshore and shipbuilding industries, rather than to have coverage depend on the fortuitous circumstances as to where an accident occurred."

Further on in the opinion, the Board

considered the argument of the employer that the amendments and the Act as amended were unconstitutional, at p. 2425 as follows:

"Finally, the constitutional question raised by the employer as to whether Congress could expand coverage to include shore-based employees, such as the claimant herein, is easily disposed of by reference to the Supreme Court's decision in *Victory Carriers, Inc. v. Law*, 404 U.S. 202, 1972 AMC 1, at 12-13 (1971), where the Court said:

[E]xtending the constitutional boundaries of the maritime law would not require Congress to make an equivalent extension of the jurisdiction of the federal courts sitting in admiralty. Congress might well prefer not to extend the jurisdiction of the federal courts. On the other hand, if denying federal remedies to longshoremen injured on land is intolerable, Congress has ample power under Arts. I and III of the constitution to enact a suitable solution.

"This Congressional authority to extend jurisdiction has been long recognized. In *State of Washington v. Dawson & Co.*, 264 U.S. 219, 1924 AMC at 409 (1924) the Supreme Court said:

'Without doubt, Congress has the power to alter, amend, or revise the maritime law by statutes of general application embodying its will and judgment. This power, we think, would permit enactment of a general

Employers' Liability Law or general provisions for compensating injured employees; * * * Exercising another power -- to regulate commerce, Congress has prescribed the liability of interstate carriers by railroad for damages to employees (Act April 22, 1908 149, 35 Stat. 65 (Comp. St. secs. 8657-8665)) and hereby abrogated conflicting local rules. *New York Central RR Co. v. Winfield*, 244 U.S. 146.'

"Thus, the Supreme Court has already made clear that there is congressional authority for the extensions of jurisdiction in the longshoring and shipbuilding industries both via its maritime jurisdiction and its power to regulate commerce."

Certainly the present matter comes within the foregoing.

The other way in which the amendments require the District Court to take jurisdiction is based on the amendments to Section 5 of the Act, which establishes a negligence action against the vessels and their owners (i.e., the tug, crewboat and barge in the present case). This seems clear from the legislative history, *supra* at p. 4705, where the House Committee stated:

"Finally, the Committee does not intend that the negligence remedy authorized in the bill shall be applied differently in different ports depending on the law of the State in which the port may be located. The Committee intends that legal questions which may arise in actions brought under these provisions of the law shall be determined as a matter of Federal law. In that connection, The Committee intends that the admiralty concept of comparative negligence, rather than the common law rule as to contributory negligence shall apply in cases where the injured employee's own negligence may have contributed to causing the injury. Also, the Committee intends that the admiralty rule which precludes the defense of 'assumption of risk' in an action by an injured employee shall also be applicable.

"Finally, the Committee wishes to emphasize that nothing in this bill is intended to relieve any vessels or any other persons from their obligations and duties under the Occupational Safety and Health Act of 1970. The Committee recognizes that progress has been made in reducing injuries in the longshore industry, but longshoring remains one of the most hazardous types of occupations. The Committee expects to see further progress in reducing injuries and stands ready to immediately reexamine the whole third party suit question if it appears that the changes made in present law by this bill have affected progress in improving occupational health and safety."

The new edition of *Gilmore & Black* (2d edition, 1975) discusses this issue in

considerable detail and supports the position of petitioner in its entirety, as follows at pages 450- 454:

"A more difficult problem is presented by the landward extension of the LHCA territorial limits. May a 'covered person' who is injured on land (the cause of his injury being connected with the 'vessel') bring his third party negligence action? Is *Gutierrez v. Waterman Steamship Co.* still good law? Has *Victory Carriers, Inc. v. Law* been overruled in all its aspects and implications? Have the old cases which established that actions under the Jones Act could be brought for injuries suffered on land been adopted? The available legislative history suggests no answers to these question.

* * * * *

"The Committee intends that the admiralty concept of comparative negligence, rather than the common law rule as to contributory negligence, shall apply in cases where the injured employee's own negligence may have contributed to causing the injury. Also, the Committee intends that the admiralty rule which precludes the defense of 'assumption of risk' in an action by an injured employee shall also be applicable.

* * * * *

"We may assume without further argument that the Sec. 905 (b) negligence action does not lie for injuries caused by

conditions of transitory unseaworthiness under the Trawler Racer doctrine or by conditions for which no one employer by the ship is responsible under the Petterson doctrine. We may also assume that the Sec. 905 (b) action does lie for injuries caused by conditions of unseaworthiness which result from the negligence of the ship's personnel. It can hardly be seriously argued that the Sec. 905 (b) action was meant to lie only for injuries directly caused by operating negligence on the part of the crew which does not make the ship unseaworthy. The action must certainly lie for injuries caused by defective equipment and gear belonging to the ship which the crew had negligently left in a dangerous state.

* * * * *

"There was a time in the development of common law theories of tort when the courts accepted the idea that landowners owed differing degrees of care to the various classes of people who might come on the land with the owner's permission or in furtherance of the owner's interest (business invitees, guests, licensees, and so on). In *Kermarec v. Compagnie Generale Transatlantique* it was argued that such common law distinctions should be applied to the case of a person who was injured when he was on the ship, with the permission of the executive officer, as a guest of a crew member; as a 'mere licensee', the argument went, he was entitled to a lower degree of care than if he had been an 'invitee'. Justice Stewart, writing for a unanimous Court, first reviewed the common law history, coming to the

conclusion that the earlier distinctions had largely been abandoned in favor of a unitary standard of liability. He went on:

'For the admiralty law at this late date to import such conceptual distinctions would be foreign to its traditions of simplicity and practicality . . . We hold that the owner of the ship in navigable waters owes to all who are on board for purposes not inimical to his legitimate interests the duty of exercising reasonable care under the circumstances of each case.'

"Kermarec may reasonably be cited to the proposition that the same standard of care is owed to all persons who are legitimately on the ship--crew members, passengers, longshoremen, repairmen, even those who at common law would have been described as 'mere licensees'. For present purposes we may leave the passengers and guests to fight their own battles. The longshoremen and repairmen are on the ship in furtherance of the shipowner's commercial interests. They are, as the Supreme Court liked to put it during the Sieracki period, doing the ship's work--arguably, work that at our time was performed by the crew--they are unquestionably subject to the ship's hazards. As Justice Black, speaking of a repairman, wrote in *Pope & Talbot, Inc. v. Hawn*:

'His need for protection from unseaworthiness was neither more nor less than that of the stevedores then working with him on the ship or of seaman who had been or were about to go on a voyage. All were entitled

to like treatment under law.'

"If we substitute 'negligence' for 'unseaworthiness' in the passage quoted, Justice Black's eloquent statement makes the case for a unitary standard of negligence in Jones Act and Sec. 905 (b) cases.

* * * * *

"It will be remembered that the Supreme Court once held, in *International Stevedoring Co. v. Haverty*, that a longshoreman could sue his employer under the Jones Act. The enactment of LHCA in 1927 seemed to make the Haverty holding obsolete: the longshoreman was restricted to his compensation remedy against his employer, the stevedore, and it came to be believed that actions under the Jones Act could be brought only against employers. The proposition that the Jones Act defendant must have been the plaintiff's employer at the time of the injury turns out, on analysis, to be less firmly based in the Jones Act case law that has often been assumed. The chances that a harbor worker's lawyer could convince a court today that his client should be allowed to bring a Jones Act action against a shipowner who was not his employer may be slim but should not be put at zero. But the harbor worker's lawyer should derive aid and comfort from the Haverty holding and the Haverty opinion even if he stops short of pleading the Jones Act. "Haverty may well be cited to the proposition that the standards of negligence applicable to harbor workers should be the same as the standards applicable to seamen, since both incur the same hazards. Or it might

be argued that Sec. 905 (b) incorporates the Jones Act even though the harbor worker can no longer bring an action for unseaworthiness under the general maritime law.

"Adoption of the idea that Sec. 905 (b) incorporates the Jones Act would point to a solution for a whole host of procedural problems which Sec. 905 (b) says nothing about (such as, for example, venue). The 'action against (the) vessel (for negligence)' was presumably meant to be an action within the admiralty jurisdiction. No doubt the Sec. 905 (b) plaintiff may elect, under the saving to suitors clause, to bring his action on the civil side of federal court. If he does so and if there is no diversity jurisdiction, is he entitled to a jury? It would be hard to elaborate reasons of policy why Jones Act seamen are always entitled to a jury while Sec. 905 (b) harbor workers doing the same kind of work under the same conditions of danger are not. And there, are of course, many workers whose conditions of employment leave them straddling the line (wherever the line may be) which separates Jones Act seamen from LHCA harbor workers. Unless the Sec. 905 (b) action is held to incorporate the Jones Act right to a jury trial, the federal courts will have to waste their time and energies deciding a great many cases of this sort. There is another possible approach to the jury trial question through *Fitzgerald v. United States Lines, Inc.* in which the Supreme Court held, in effect, that it had the power to provide for jury trials in admiralty and did so with respect to a maintenance and cure count

joined with a Jones Act count.

"If the courts fashion the Sec. 905 (b) action in the image of the Jones Act action, they will find helpful precedents for most of the problem that will arise in litigation. If they do so, the LHCA harbor workers will be substantially in the position of the Jones Act seaman (with compensation benefits substituted for maintenance and cure) except that the harbor workers will not be entitled to recover under the no fault fringes of the unseaworthiness doctrine. If the courts do not do that, the Sec. 905 (b) U.S.C.A. annotations will in time rival the Jones Act annotations."

In Swans vs. United States Lines, Inc.,

407 F. Supp. 388 (E.D. Pa. 1975) the

Court concluded at page 392:

"The legislative history of these amendments illuminates the Congressional intent to extend the reach of the LHWCA to a longshoreman's land-based injury. In H.R. No. 92-1441, 3 U.S. Code Cong. & Admin. News 1972, pp. 4707-4708 the Committee stated:

"The present Act . . . covers only injuries which occur 'upon the navigable waters of the United States'. Thus, coverage . . . stops at the water's edge; injuries occurring on land are covered by State Workmen's Compensation laws . . . The Committee believes that the compensation payable to a longshoreman . . . should not depend on the fortuitous circumstances of whether the injury occurred on land or over water.

"See Avvento v. Hellenic Lines, Ltd., 1975 A.M.C. 153 (Ben.Rev.Bd. 1974); Coppolino v. International Terminal Operating Co., 1974 A.M.C. 422 (Ben.Rev.Bd. 1974).

"We believe this authority supports the contention of third-party defendant that the 1972 amendments to the LHWCA have effectively eviscerated Vicotry Carriers and its progeny."

Please also see DiLorenzo v. Robert E. Lee, Inc., 412 F.Supp. 1012 (E.D. La. 1976).

III. SINCE THE RAMP IS AN "APPPURTE-NANCE" OF THE VESSEL, JURISDICTION SHOULD BE RECOGNIZED UNDER THE ADMIRALTY EXTENSION ACT, 46 USC SECTION 740.

Petitioner has established jurisdiction under the Admiralty Extension Act, 46 U.S.C. 740, where, as here, an appurtenance of a vessel has caused damage and injury on a land-based ramp. Romero Reyes v. Marine Enterprises, Inc., *supra*.

Please also see Hauland vs. Fearnley and Ager, 110 F.Supp. 657 (E.D. Penn. 1952), in which it was held that when injury results from an act of any of the

vessel's personnel in the course of operating the vessel, (i.e., in the present case, the instructions given to the plaintiff by members of the crew), jurisdiction may be sustained under 46 U.S.C. Section 740.

IV. SINCE THE LONGSHOREMEN AND HARBOR WORKERS' COMPENSATION ACT RESTRICTS THE CAUSES OF ACTION AND LIMITS THE PARTIES IN A THIRD PARTY NEGLIGENCE ACTION, JURISDICTION SHOULD BE RECOGNIZED UNDER THE COMMERCE CLAUSE, 28 USC 1337.

The Longshoremen's and Harbor Workers Compensation Act is a statute which comes within Section 1337 in that the commerce power is involved in a significant way as the basis for the statute, both as originally enacted and as amended.

Wright & Miller, Section 3574 at p. 505 use this test, and discuss at p. 505 and at p. 508 the Jones Act and the many laws relating to shipping which have been held to have come within 28 USC 1337.

The most persuasive analogy is to the

Jones Act. The Jones Act has been held to be a statute within the intendment of 28 USC 1337 in that although it may be derived from the "grant of admiralty jurisdiction", the Supreme Court "has held that it also rests, in part at least, on the power to regulate commerce, and that, "Accordingly, Jones Act cases can be brought under Section 1337 without regard to amount in controversy." Wright & Miller, Sec. 3574 p. 505.

This has been the view of all of the cases which have considered the effect of 28 USC 1337 in such a situation. Please see Ballard v. Moore-McCormack Lines, Inc., 285 F. Supp. 290 at 295 (S.D. N.Y. 1968), noted 44 Tul. L. Rev. 209 (1969), Brown v. Sinclair Refining Co., 227 F. Supp. 714 (S.D. N.Y. 1964), and United States District Court Judge Rubin's case of Richardson v. St. Charles - St. John the Baptist Bridge & Ferry Authority, 274 F. Supp. 765 at 767-769 (E.D. La. 1967),

in which he stated:

"This is a suit at law and a jury trial is demanded. When an action is brought in admiralty under the Jones Act; jurisdictional amount is not required. But it is suggested that a different result should be reached when the injured seaman elects to proceed on what was once known as the law side. While several courts have said that this is so, the Court has found no case reaching this result in which the court actually considered the applicability of Sec. 1337.

"The Jones Act was patterned after the Federal Employers' Liability Act and extends to seamen benefits of the same type previously made applicable to railway workers. In Imm v. Union Railroad Company, 1961, 289 F.2d 858, the Court of Appeals for the Third Circuit held that FELA suits arose under an act regulating commerce, and hence under Sec. 1337 of the Judicial Code; therefore there was no requirement of jurisdictional amount. The Court expressly reserved the question whether a like rule applied to Jones Act cases.

"But Judge Sugarman was presented with that question in Brown v. Sinclair Refining Co., S.D. N.Y., 1964, 227 F. Supp. 714, and held that a United States District Court has jurisdiction of a Jones Act suit at law regardless of jurisdictional amount. This is the result suggested as 'the better view' in 2 Norris, The Law of Seamen, Section 676, page 831, and supported by Professor Wright, in his text on Federal Courts, Sec. 32, page 92.

"A contrary result is not required by any of the cases cited by counsel for the insurer. *Romero v. International Terminal Operating Co.*, 1959, 358 U.S. 354, 79 S.Ct. 468, 3 L.Ed.2d 368, simply held that a civil action for a maritime tort could not be brought under Sec. 1331. The case did not consider the question of the jurisdictional basis of Jones Act claims. The Court likewise does not find any of the other cases cited by counsel for the insurer persuasive because there is no indication in any of the decisions that jurisdiction under 28 U.S.C.A. Sec. 1337 was urged or considered."

"But the Jones Act is remedial and to require jurisdictional amount here would be inconsistent with the liberal purposes of the Act. Neither the words of the Jones Act nor the language of Sec. 1331 precludes doing what I think Congress would have wished had it thought about the matter, and what I consider sound public policy: that is maintaining jurisdiction here on the basis that the Jones Act claim arises under an Act of Congress regulating commerce. Moreover, since one of the constitutional bases for enacting the Jones Act has been said to be the power of Congress to regulate commerce, maintenance of jurisdiction under Sec. 1337 seems consistent with the requirements of that section. Hence, I conclude that jurisdiction is conferred by Sec. 1337, and jurisdictional amount is not required."

Similarly, many other statutes involving shipping have been held to have been cognizable under 28 U.S.C. Sec. 1337. In

Port of Boston Marine Terminal Association v. Boston Shipping Association, 420 F.2d 419 (1st. Cir. 1970) reversed on other grounds, 400 U.S. 62, 91 S.Ct. 203, 27 L.Ed.2d 203 (1970), the First Circuit held that the Federal Shipping Act, 46 U.S.C.A. Sec. 801 et seq., was within the jurisdiction of the Federal Courts under 28 U.S.C.A. Sec. 1337.

In the Statement of Policy to the Merchant Marine Act, 1936, 46 U.S.C.A. Sec. 1101, it is stated that:

"It is necessary for the national defense and development of its foreign and domestic commerce that the United States shall have a merchant marine
* * *."

The Court in Safir v. Gibson, 417 F.2d 972, (2nd Cir. 1969), appeal after remand 432 F.2d 137, upon considering a question raised under the Merchant Marine Act held at page 975 that, "Federal jurisdiction was sufficiently predicated on 28 U.S.C. Sec. 1337, which gives the district court jurisdiction over any actions arising

under any Act of Congress regulating commerce * * *."

The Carriage of Goods by Sea Act, Sections 1 et seq. 1(e), 46 U.S.C.A. Sections 1300 et seq., 1309 (e), in Crispin Co. v. Lykes Brothers S. S. Co. 134 F.Supp. 704 (D. C. Tx. 1955), and the Steamboat Inspections Laws, 46 U.S.C.A. Sections 361 et seq., in Bryant v. Rucker, 111 F.Supp. 309 (D.C. Ala. 1953), have both been held to be Acts of Congress regulating commerce within the purview of 28 U.S.C.A. Section 1337.

From the above discussion dealing with various congressional acts regulating shipping and the rights and liabilities of those connected to shipping, it is obvious, by analogy, that the Longshoremen and Harbor Workers' Compensation Act was enacted by Congress in order to help regulate commerce, Section 1337.

As has pointed out in Coppolino v. International Terminal Operating Co.,

Inc., supra, at 2426:

"Thus the Supreme Court has already made clear that there is congressional authority for the extensions of jurisdiction in the longshoring and shipbuilding industries both via its maritime jurisdiction and its power to regulate commerce." (Emphasis added).

CONCLUSION

For all of these reasons, a writ of certiorari should issue to review the judgment and opinion of the United States Court of Appeals for the Fifth Circuit.

Respectfully submitted,

KOERNER, BABST & LAMBERT
A Professional Law Corp.

BY: LOUIS R. KOERNER, JR.

BY: STEVEN B. WITMAN
730 Camp Street
New Orleans, La. 70130
(504) 581-9569

DREWETT, JACQUES & THOMAS
ROBERT T. JACQUES, JR.
625 Kirby Street
P. O. Box 1883

40
Lake Charles, Louisiana
(318) 433-4674

Counsel for Petitioner

CERTIFICATE OF SERVICE

I hereby certify that on this _____
day of _____, 1976, copies of the
Petition for Writ of Certiorari were
mailed to counsel for all respondents.
I further certify that all parties
required to be served have been served.

KOERNER & BABST
A Professional Law Corp.

BY:

LOUIS R. KOERNER, JR.
730 Camp Street
New Orleans, La. 70130
(504) 581-9569
Counsel for Petitioner

United States Court of Appeals

FOR THE FIFTH CIRCUIT

No. 75-2075

D. C. Docket No. CA-74-2362 "F"

ROBERT LEE PARKER,

Plaintiff-Appellant,

versus

SOUTH LOUISIANA CONTRACTORS,
INC., ET AL.,

Defendants-Appellees.

*Appeal from the United States District Court for the
Eastern District of Louisiana*

Before TUTTLE, AINSWORTH and CLARK, Circuit Judges.

J U D G M E N T

This cause came on to be heard on the transcript of the
record from the United States District Court for the Eastern
District of Louisiana, and was argued by counsel;

ON CONSIDERATION WHEREOF, It is now here ordered and adjudged
by this Court that the judgment of the said District Court in this
cause be, and the same is hereby, affirmed.

August 16, 1976

Issued as Mandate:

Robert Lee PARKER,
Plaintiff-Appellant,

v.

SOUTH LOUISIANA CONTRACTORS,
INC., et al., Defendants-Appellees.

No. 75-2075.

United States Court of Appeals,
Fifth Circuit.

Aug. 16, 1976.

Truck driver, who was injured while walking along heavy steel ramp attached to land and projecting over water and used for providing ingress and egress for overland vehicles from docked barges, brought third-party tort action. The United States District Court for the Eastern District of Louisiana, at New Orleans, Lansing L. Mitchell, J., entered judgment dismissing suit and injured driver appealed. The Court of Appeals, Ainsworth, Circuit Judge, held, *inter alia*, that the action was not within the jurisdiction of federal district court under traditional admiralty jurisdiction or as extended by the Admiralty Extension Act, and that the amendments to the Longshoremen's and Harbor Workers' Act did not give district court jurisdiction of driver's third-party negligence claim.

Affirmed.

1. Admiralty ⇐18

Jurisdiction of admiralty with respect to torts is exclusively dependent upon locality of act. 28 U.S.C.A. § 1333.

2. Admiralty ⇐18

Maritime jurisdiction does not embrace accidents on land or injuries in-

flicted to or on extensions of land such as docks and piers.

3. Admiralty ⇐22

Where injury to truck driver, prior to driving his truck off barge, occurred as driver was walking on steel ramp, which weighed several tons, rested on land and had an apron extending over water's edge which could be raised and lowered to permit the ingress and egress from docked barges, suit against third parties for personal injuries was not within traditional admiralty jurisdiction of federal district court and was not within terms of the statute extending admiralty jurisdiction to permit recovery where a ship or its gear causes damage or injury on shore. 28 U.S.C.A. § 1333; 46 U.S.C.A. § 740.

4. Admiralty ⇐22

Extension of compensation benefits under amendments to the Longshoremen's and Harbor Workers' Compensation Act, to insure that availability of compensation would no longer depend on the fortuitous circumstance of whether injury occurred on land or over water, does not imply that admiralty jurisdiction has been extended to embrace non-compensation claims brought by employees against parties other than their employers. Longshoremen's and Harbor Workers' Compensation Act, §§ 1-49 as amended 33 U.S.C.A. §§ 901-949.

5. Admiralty ⇐20

With respect to third-party actions for negligence, boundaries of maritime jurisdiction as defined under prior law were neither expanded nor constricted by passage of 1972 Amendments to the Longshoremen's and Harbor Workers' Compensation Act but simply retained. Longshoremen's and Harbor Workers' Compensation Act, §§ 1-49 as amended 33 U.S.C.A. §§ 901-949.

Synopses, Syllabi and Key Number Classification
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The Synopses, Syllabi and Key Number Classification constitute no part of the opinion of the court.

6. Admiralty ⇐22

Truck driver, injured while walking on steel ramp on which he was to drive his truck off docked barge, did not come within jurisdiction of federal district court with respect to his third-party negligence actions because of amendments to Longshoremen's and Harbor Workers' Compensation Act. Longshoremen's and Harbor Workers' Compensation Act, §§ 1-49 as amended 33 U.S.C.A. §§ 901-949.

7. Courts ⇐289(2)

Since amendment to Longshoremen's and Harbor Workers' Compensation Act merely preserves injured worker's right to recover damages from third party in accordance with preexisting, nonstatutory negligence principles, truck driver injured while walking on the steel ramp attached to land could not convert his ordinary tort claim into a federal cause of action by invoking such statute as a predicate for jurisdiction under statute giving district court's original jurisdiction of civil actions arising under any act of Congress regulating commerce. Longshoremen's and Harbor Workers' Compensation Act, § 5(b) as amended 33 U.S.C.A. § 905(b); 28 U.S.C.A. § 1337.

Appeal from the United States District Court for the Eastern District of Louisiana.

Before TUTTLE, AINSWORTH and CLARK, Circuit Judges.

1. Act of Oct. 27, 1972, Pub.L.No.92-576, 86 Stat. 1251 (codified in scattered sections of 33 U.S.C. §§ 901-49).

2. According to a memorandum filed by Parker's employer in support of a motion to intervene, compensation for the injury in question

AINSWORTH, Circuit Judge:

This tort action raises a number of jurisdictional questions concerned primarily with the scope of federal judicial power to adjudicate maritime claims, particularly in view of the 1972 Amendments to the Longshoremen's and Harbor Workers' Compensation Act (hereinafter referred to as the "LHWCA" or simply as "the Act").¹ Robert Lee Parker filed this suit on August 27, 1974, to recover damages for physical injuries he suffered as a result of an accident that occurred approximately three weeks earlier.² Named as defendants in his complaint were Soloco Pipeline Contractors, Inc. and South Louisiana Contractors, Inc., owners and/or lessees of a barge and tug used to transport a truck that Parker was to drive; Martin Exploration Corporation, which leased and/or owned a landing on the Atchafalaya River where the injury occurred; and H. J. Serette, who owned a crewboat used to transport Parker after the accident. The District Court granted defendants' motion for summary judgment and dismissal due to lack of jurisdiction on February 19, 1975, and entered a final judgment to that effect the following day.

Appellant maintains that the District Court erred in failing to recognize that jurisdiction should have been predicated on some or all of the following bases: (1) admiralty and general maritime law under 28 U.S.C. § 1333; (2) the Admiralty Extension Act, 46 U.S.C. § 740; (3) the 1972 Amendments to the LHWCA; and (4) 28 U.S.C. § 1337, which confers jurisdiction in civil actions arising under Acts

is being paid under the LHWCA. As noted in the brief of appellee Serrette, appellant has also filed a timely suit against the defendants named here in a district court of the State of Louisiana.

of Congress regulating commerce. We find that none of these asserted bases of jurisdiction are applicable here and therefore affirm.

I. The Accident

At the time of the accident, Parker was employed as a truck driver by Atlas Truck Lines, Inc. On August 5, 1974, he was instructed to deliver a truckload of pipecasing to Martin Exploration Corporation at the Butte-LaRose landing on the Atchafalaya River. From there, he and the truck he was driving were transported by barge to another landing on the east bank of the Atchafalaya in Iberville Parish, Louisiana, near an oil well drilling site located on land. After arriving there late at night, Parker was to drive his truck off the barge along a steel ramp designed for the loading and unloading of overland vehicles. The ramp, which weighed several tons, rested on land and had an apron extending over the water's edge which could be raised and lowered by winches to permit ingress and egress from docking barges. Before driving his truck off the barge, Parker walked along the ramp, a board road, and beyond, reconnoitering the route toward the drilling site. On his way back to the barge, he overheard members of the barge's crew saying that one of the winches was stuck. In the process of walking across the ramp to render assistance, he slipped in the unilluminated gap that ran longitudinally along the center of the ramp and suffered a severe injury to his right foot

and other injuries complained of in this litigation.

II. Admiralty and Maritime Jurisdiction under 28 U.S.C. § 1333

[1, 2] The Supreme Court has recently reiterated the traditional view going back to the time of Justice Story and beyond, "that the jurisdiction of the admiralty [with regard to torts] is exclusively dependent upon the locality of the act." *Victory Carriers, Inc. v. Law*, 404 U.S. 202, 205, 92 S.Ct. 418, 421, 30 L.Ed.2d 383 (1971), quoting *Thomas v. Lane*, 23 Fed.Cas. No. 13,902, pp. 957, 960 (C.C.Me.1813) (Story, J.).³ As historically construed by the Supreme Court, maritime jurisdiction does not embrace accidents on land, or injuries inflicted to or on extensions of the land such as docks and piers. *Victory Carriers, supra*, 404 U.S. at 206-07 & nn. 3-4, 92 S.Ct. 422 & nn. 3-4; *Nacirema Operating Co. v. Johnson*, 396 U.S. 212, 214-15, 90 S.Ct. 347, 349, 24 L.Ed.2d 371 (1969).

[3] Relying on language in *Victory Carriers* to the effect that "[t]he gangplank has served as a rough dividing line between the state and maritime regimes," 404 U.S. at 207, 92 S.Ct. at 422, appellant contends that the ramp on which his injury occurred was analogous to a gangplank, and that his claim is thus cognizable in admiralty. Appellant places particular emphasis in this regard on dicta in *O'Keeffe v. Atlantic Stevedoring Co.*, 5 Cir., 1965, 354 F.2d 48, 50, and on *Michigan Mutual Liability Co. v. Arrien*, 2 Cir., 1965, 344 F.2d 640, 644. In *O'Keeffe*, the court held that there

with the established "locality" test in order for admiralty jurisdiction to attach. The effect, of course, was to make the test for admiralty jurisdiction even more stringent than it was under the locality test alone.

3. In its recent decision in *Executive Jet Aviation, Inc. v. City of Cleveland*, 409 U.S. 249, 268, 93 S.Ct. 493, 504, 34 L.Ed.2d 454 (1972), the Supreme Court held that a wrong must "bear a significant relationship to traditional maritime activity" in addition to complying

was coverage under the LHWCA⁴ for an accidental death which occurred when a longshoreman working on a dock was snagged by a ship's boom, swung against either the dock or the ship, and dropped into the intervening water. In reaching this result, the *O'Keeffe* court noted that

a gangplank, not being permanently attached to the land, and traditionally, if not always so in fact, a part of the equipment of the ship, is regarded as a part of the ship so that an injury occurring upon a gangplank is regarded as having occurred upon navigable waters.

354 F.2d at 50. Then, recapitulating the holding in *Arrien, supra*, the *O'Keeffe* court continued,

This rule has been recently extended so as to include, as being over water, a skid which was impermanently affixed to the wharf although sufficiently connected with the land as to sustain an award to an injured longshoreman under a state workmen's compensation act. [Citing *Arrien*.]

Id. Unlike the ramp in the present case, the skid involved in *Arrien* and referred to in *O'Keeffe* extended entirely over water, and could be easily dismantled and stored on the wharf when not in use. See *Arrien, supra*, at 642-44. It was a removable wooden platform, approximately six feet by ten feet, which extended over the waters between vessel and wharf. *Id.* at 642. In contrast, the ramp in the present case rested on land, and removing it would involve a major undertaking calling for heavy equipment. Unlike a gangplank, it cannot reasonably be conceived as an appurtenance of the barges that use it for docking. Cf. *Davis v. W. Bruns & Co.*, 5 Cir., 1973, 476 F.2d 246, 248 (worker injured

in conveyor apparatus used to unload bananas on a pier could not recover in admiralty because conveyor was not an appurtenance of the vessel being unloaded at the time of the accident). Since Parker's accident thus occurred on a land-based structure most closely resembling a dock or pier, we conclude that his claim does not come within admiralty jurisdiction under the principles reiterated in *Victory Carriers* regarding extensions of land. The fact that the point on the ramp where Parker fell may have been above water at the time of his injury does not alter this conclusion. See, e.g., *Rodrigue v. Aetna Casualty & Surety Co.*, 395 U.S. 352, 89 S.Ct. 1835, 23 L.Ed.2d 360 (1969); *Bible v. Chevron Oil Co.*, 5 Cir., 1972, 460 F.2d 1218; *Hastings v. Mann*, 4 Cir., 1965, 340 F.2d 910, cert. denied, 380 U.S. 963, 85 S.Ct. 1106, 14 L.Ed.2d 153 (1965).

III. The Admiralty Extension Act

Congress passed the Admiralty Extension Act, 46 U.S.C. § 740, to permit recovery in situations where a ship or its gear causes damage or injury on shore. Under that act,

[t]he admiralty and maritime jurisdiction of the United States shall extend to and include all cases of damage or injury, to person or property, caused by a vessel on navigable water, notwithstanding that such damage or injury be done or consummated on land.

In *Gutierrez v. Waterman Steamship Corp.*, 373 U.S. 206, 209-10, 83 S.Ct. 1185, 1188, 10 L.Ed.2d 297 (1963), the Supreme Court held that a claim for injuries suffered by a longshoreman who slipped on some loose beans on a dock came within federal maritime jurisdiction under the Admiralty Extension Act,

4. 33 U.S.C. §§ 901-49.

since the beans were spilled as a result of negligence on the part of the shipowner in allowing beans packed in defective bags to be unloaded. In contrast, Parker's injury was in no sense "caused by a vessel on navigable water," and his contention that jurisdiction could have been predicated on 46 U.S.C. § 740 is accordingly without merit.

IV. Impact of the 1972 Amendments

[4] Parker next contends that even if his claim was not cognizable in admiralty prior to the enactment of the 1972 Amendments to the LHWCA,⁵ the passage of those Amendments had the effect of extending admiralty jurisdiction sufficiently to embrace his claim. His argument takes note of the fact that the Amendments broadened coverage under the Act to make compensation available for injuries occurring upon the navigable waters of the United States, "including any adjoining pier, wharf, dry dock, terminal, building way, marine railway, or other adjoining area customarily used by an employer in loading, unloading, repairing, or building a vessel." 33 U.S.C. § 903(a) (as amended). Essentially, his contention seems to be that in view of this broadened coverage, it necessarily follows that admiralty jurisdiction with regard to third party claims such as his own had experienced a parallel widening. The fact that compensation coverage was expanded to ensure that the availa-

bility of compensation benefits would no longer depend upon the "fortuitous circumstance of whether the injury occurred on land or over water,"⁶ however, does not imply that admiralty jurisdiction has been extended to embrace non-compensation claims brought by employees against parties other than their employers. Indeed, a careful reading of the provision of the 1972 Amendments governing third party actions and the pertinent legislative history leads us to the opposite conclusion.

The provision in question effectuated a fundamental restructuring of the rights and remedies available to harbor workers in third party actions. Specifically, it provides:

In the event of injury to a person covered under this chapter caused by the negligence of a vessel, then such person, or anyone otherwise entitled to recover damages by reason thereof, may bring an action against such vessel as a third party . . . and the employer shall not be liable to the vessel for such damages directly or indirectly and any agreements or warranties to the contrary shall be void. . . . The liability of the vessel under this subsection shall not be based upon the warranty of seaworthiness or a breach thereof at the time the injury occurred.

33 U.S.C. § 905(b).⁷ The principal aim of this section was to legislatively overrule

charterer, master, officer, or crew member." "[A]n action against [the] vessel" under section 905(b) thus appears to embrace what have traditionally been called libels in personam as well as libels in rem. G. Gilmore and C. Black, *The Law of Admiralty* 450 (2d ed. 1975). In light of the breadth of the term "vessel" as defined in section 902(21), it will be convenient in what follows to refer to actions against the vessel simply as third party actions.

5. Act of Oct. 27, 1972, Pub.L.No.92-576, 86 Stat. 1251 (codified in scattered sections of 33 U.S.C. §§ 901-49).

6. 1972 U.S.Code Cong. & Admin.News at p. 4708.

7. The term "vessel" is defined extremely broadly under 33 U.S.C. § 902(21), which was added by the 1972 Amendments, to include "said vessel's owner, owner pro hac vice, agent, operator, charter [sic] or bare boat

Seas Shipping Co. v. Sieracki, 328 U.S. 85, 66 S.Ct. 872, 90 L.Ed. 1099 (1946) and *Ryan Stevedoring Co. v. Pan-Atlantic Steamship Corp.*, 350 U.S. 124, 76 S.Ct. 232, 100 L.Ed. 133 (1956), which allowed an injured employee to impose indirect liability on his employer for damages in excess of compensation limits. Thus, section 905(b) is primarily designed to prevent continued circumvention of section 905(a) of the LHWCA, which makes compensation the employee's exclusive remedy against his employer.

[5, 6] Of particular importance in the present case is the fact that section 905(b) eliminates only an injured worker's right to bring actions against third parties based on unseaworthiness, and preserves his right under prior law to recover for third party negligence. Although the relevant legislative history created some confusion by failing to specify with sufficient clarity the precise standard of care to be applied in such third party negligence actions,⁸ it leaves little doubt that Congress did not intend section 905(b) to create a new or broader cause of action in admiralty:

The purpose of the amendments is to place an employee injured aboard a vessel in the same position he would be if he were injured in non-maritime employment ashore, insofar as bringing a third party damage action is concerned, and not to endow him with any special maritime theory of liability or cause of action under whatever judicial nomenclature it may be called, such as "unseaworthiness", "non-delegable duty", or the like.

Persons to whom compensation is payable under the Act retain the right

8. See, e.g., G. Gilmore and C. Black, *The Law of Admiralty* 453-55 (2d ed. 1975); Comment, *Negligence Standards under the 1972 Amend-*

to recover damages for negligence against the vessel, but under these amendments they cannot bring a damage action under the judicially-enacted doctrine of unseaworthiness.

1972 U.S.Code Cong. & Admin.News at p. 4703 (emphasis added). Taken as a whole, the manifest purpose of section 905(b) is to curtail rather than expand the availability of third party actions in admiralty. With respect to third party actions for negligence, the reasonable inference is that the boundaries of maritime jurisdiction as defined under prior law (e.g., *Victory Carriers*) were neither expanded nor constricted by passage of the 1972 Amendments, but simply retained. Accordingly, Parker can draw no jurisdictional solace from the shoreward extension of compensation coverage under the Amendments, since at least with regard to third party negligence claims such as those involved in his case, the Amendments envisage no parallel extension of admiralty jurisdiction.

V. Section 1337 Jurisdiction

[7] Finally, appellant maintains that jurisdiction to consider his claim exists under 28 U.S.C. § 1337, which provides:

The district courts shall have original jurisdiction of any civil action or proceeding arising under any Act of Congress regulating commerce or protecting trade and commerce against restraints and monopolies.

Appellant contends that his action arises under the LHWCA, as amended in 1972. Since he does not seek relief against his employer, the only provision of the LHWCA under which Parker's action

ments to the Longshoremen's and Harbor Workers' Compensation Act: *Examining the Viewpoints*, 21 Vill.L.Rev. 244, 255-60 (1976).

may even arguably be thought to arise is section 905(b), governing third party actions for negligence. As has been indicated in the preceding discussion, however, section 905(b) merely preserves an injured worker's right to recover damages from third parties in accordance with ~~provisional~~ nonstatutory negligence principles. Thus, appellant may not convert an ordinary tort claim into a federal cause of action by invoking a

statutory provision such as section 905(b) as a predicate for section 1337 jurisdiction.

VI. Conclusion

Since none of the alleged bases of jurisdiction advanced by appellant withstand analysis, we conclude that the District Court properly held there was no jurisdiction to consider this case.

AFFIRMED.

September 17, 1976

TO ALL COUNSEL OF RECORD

NO. 75-2075 - Robert Lee Parker vs. South Louisiana
Contractors, Inc., et al.

Dear Counsel:

This is to advise that an order has this day been entered denying the petition() for rehearing, and no member of the panel nor Judge in regular active service on the Court having requested that the Court be polled on rehearing en banc (Rule 35, Federal Rules of Appellate Procedure; Local Fifth Circuit Rule 12) the petition() for rehearing en banc has also been denied.

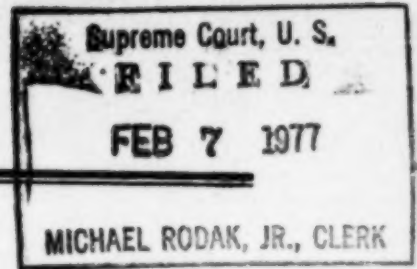
See Rule 41, Federal Rules of Appellate Procedure for issuance and stay of the mandate.

Very truly yours,

EDWARD W. WADSWORTH, Clerk

By Clare F. Sachs
Deputy Clerk

cc: Mr. Louis R. Koerner, Jr.
Mr. Donald L. King
Messrs. Winston E. Rice
James H. Roussel
Mr. Stephen T. Victory



**In the
Supreme Court of the United States**

OCTOBER TERM, 1976

NO. 76 - 654

ROBERT LEE PARKER,

Petitioner

versus

SOUTH LOUISIANA CONTRACTORS, INC.,
SOLOCO PIPELINE CONTRACTORS, INC.,
MARTIN EXPLORATION CORPORATION AND
H. J. SERRETTE,

Respondents

BRIEF OF H. J. SERRETTE, RESPONDENT,
IN OPPOSITION TO PETITION OF ROBERT LEE
PARKER FOR WRIT OF CERTIORARI

WINSTON EDWARD RICE of
PHELPS, DUNBAR, MARKS,
CLAVERIE & SIMS
Hibernia Bank Building
New Orleans, Louisiana 70112

Attorneys for Respondent,
H. J. Serrette

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IN THE
SUPREME COURT OF THE UNITED STATES

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ROBERT LEE PARKER,
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Respondents.

BRIEF OF H. J. SERRETTE, RESPONDENT, IN
OPPOSITION TO PETITION OF ROBERT LEE PARKER
FOR WRIT OF CERTIORARI

MAY IT PLEASE THE COURT:

H. J. Serrette adopts by reference the statement of the case found at pages 1 and 2 of the Reply Brief on behalf of South Louisiana Contractors, Inc. and Soloco Pipeline Contractors, Inc., Respondents.

ALLEGED CONFLICT BETWEEN THE FIRST AND FIFTH CIRCUITS DOES NOT EXIST

Petitioner has alleged a conflict between the United States Courts of Appeals for the First and Fifth Circuits as to whether an accident occurring on a "ramp" gives rise to admiralty and maritime jurisdiction under 28 U.S.C. 1333, and in support of this assertion, petitioner has directed the Court's attention to *Romero Reyes v. Marine Enterprises, Inc.*, 494 F. 2d 866 (1st Cir. 1974). *Reyes* is clearly distinguishable from this case, and no conflict has in any way resulted from the Fifth Circuit's decision below.

The facts in *Reyes* involved an injury to a longshoreman on an actual gangway. Although the First Circuit found the gangway was "permanently affixed to a pier-based structure," it never even seriously considered that the particular structure on which the plaintiff was injured was anything other than a gangway. In the ordinary sense of the word, a gangway is a removable bridgelike structure placed over water between vessel and land. Nothing in the *Reyes* opinion indicates that anything other than such a structure was involved. Rather, the Court specifically noted that the gangway was "suspended from a tower on pilings next to the dock . . . and could be raised or lowered by cables attached to the tower." 494 F. 2d at 869.

On the other hand, the structure upon which Petitioner's alleged injury occurred was a ramp-like steel wharf located entirely upon and over dry land. Only the very edge of the wharf extended over water to enable barges to face up to it and debark overland vehicles. In order to move the wharf,

a major undertaking utilizing large equipment was required. Certainly, a structure most closely resembling a wharf dock or pier is not comparable to the gangway in *Reyes* and should by no means be considered an appurtenance of the barge from which Petitioner had debarked.

Furthermore, uncontroverted evidence, including Petitioner's own deposition, showed that the accident occurred while Petitioner was walking from one side of the wharf to the other at a location thereon directly over dry land. Petitioner did not even fall off of the ramp, much less into the water, a physical impossibility. It is factually inconceivable that Petitioner's accident could form the basis of a maritime tort to bring this case within the ambit of admiralty and general maritime law jurisdiction.

In *Victory Carriers, Inc. v. Law*, 404 U.S. 202 (1971), this Court held that federal maritime law did not govern the cause of action of a longshoreman injured on a pier by a defective forklift. The Court repeated that "the historic view of this Court has been that the maritime tort jurisdiction of the Federal Courts is determined by the locality of the accident and that maritime law governs only those torts occurring on the navigable waters of the United States." 404 U.S. at 205. It is clear that *Victory Carriers* remains the law of the land controlling a land-based casualty such as that alleged by Petitioner. In fact, as was pointed out by the Fifth Circuit in its opinion below at foot note 3, page 115, the effect of *Executive Jet Aviation, Inc. v. City of Cleveland*, 409 U.S. 249 (1972), which requires that a tort bear some significant relationship to some traditional maritime activity, in addition to it having occurred in a maritime locality, is to make the test for admiralty jurisdiction even more stringent.

Petitioner cites and provides quotations from *O'Keeffe, D.C. v. Atlantic Stevedoring Co.*, 354 F. 2d 48 (5th Cir. 1965) and *Michigan Mutual Liability Co. v. Arrien*, 344 F.2d 640 (2d Cir. 1965), in further support of his contention that admiralty jurisdiction exists in this case because the wharf upon which his injury occurred was analogous to a gangplank, but the Fifth Circuit correctly found that *O'Keeffe* and *Arrien* were inapplicable to the instant facts, stating as follows:

"In *O'Keeffe*, the court held that there was coverage under the LHWCA for an accidental death which occurred when a longshoreman working on a dock was snagged by a ship's boom, swung against either the dock or the ship, and dropped into the intervening water. In reaching this result, the *O'Keeffe* court noted that

a gangplank, not being permanently attached to the land and traditionally, if not always so in fact, a part of the equipment of the ship, is regarded as a part of the ship so that an injury occurring upon a gangplank is regarded as having occurred upon navigable waters.

354 F. 2d at 50. Then, recapitulating the holding in *Arrien, supra*, the *O'Keeffe* court continued,

This rule has been recently extended so as to include as being over water, a skid which was impermanently affixed to the wharf although sufficiently connected with the land as to sustain an award to an

injured longshoreman under a state workmen's compensation act. [Citing *Arrien*.]

Unlike the ramp in the present case the skid involved in *Arrien* and referred to in *O'Keeffe* extended entirely over water, and could be easily dismantled and stored on the wharf when not in use. See *Arrien, supra*, at 642-44. It was a removable wooden platform approximately six feet by ten feet, which extended over the waters between the vessel and wharf. *Id.* at 642. In contrast, the ramp in the present case rested on land, and removing it would involve a major undertaking calling for heavy equipment. Unlike a gangplank, it cannot reasonably be conceived as a appurtenance of the barges that use it for docking." 537 F. 2d 113, 115-116 (5th Cir. 1976).

Clearly, the Fifth Circuit has correctly decided that an injury occurring upon a land-based wharf, even though it resembles a ramp, is not sufficient to support admiralty jurisdiction on the basis of the standards established by this Honorable Court. Furthermore, since *Romero Reyes v. Marine Enterprises, Inc.*, 494 F. 2d 866 (1st Cir. 1974), involved an injury on a gangway, it is completely distinguishable from this case, and there is no conflict between the First and Fifth Circuits on this issue.

In a last ditch effort to find support for his jurisdictional arguments, Petitioner belatedly contends that admiralty and maritime jurisdiction exists because his alleged injury was allegedly aggravated as a result of the rescue efforts of a crew boat owned by Respondent, H. J. Serrette. Petitioner failed to press this aspect of his case in both Courts below, most

probably because of the tenuous nature of this claim against one acting as a Good Samaritan. The record is clear that Respondent Serrett's small boat acted as a gratuitous volunteer to evacuate Petitioner following his accident, and as such, Respondent's only duty to Petitioner would be to utilize due care under the circumstances. *Fidelity & Cas. Co. of N.Y. v. C/B MR. KIM*, 345 F. 2d 45 (5th Cir. 1965). Petitioner's only claims are 1) that he was required to crawl off the barge onto Respondent's vessel; 2) that he was required to crawl off the vessel, up a levee and across a parking lot; 3) that the vessel travelled at high speeds for an extended period of time; and 4) that the vessel lacked proper medical gear. When these last ditch allegations were raised in the District Court, that Court properly recognized that the vessel in question, manned by one crewmember, was never intended to be an ambulance; that it utilized the only available means of ingress and egress for Petitioner; and that the allegations, even if true, were insufficient to support a finding of any breach of the obligation of due care under the circumstances owed to Petitioner.

II.

1972 AMENDMENTS TO LHWCA DO NOT EXTEND ADMIRALTY JURISDICTION

Petitioner contends that the 1972 Amendments to the LHWCA legislatively overrule the holding of *Victory Carriers v. Law*, 404 U.S. 202 (1971). Certainly, petitioner has misconstrued not only the legislative intent behind the Amendments, but also the very language of the Amendments. *Victory Carriers* dealt with a longshoreman's claim, not against his employer for compensation, but against the owner of the vessel which was alongside the wharf upon which he

was injured. This Honorable Court held that such a claim, as against a non-employer, was governed by state rather than federal maritime law. The latter governs only those causes of action arising upon navigable waters.

The 1972 Amendments to the LHWCA extend coverage of that Act with regard to compensation claims against employers only. §903(a) of the Act states as follows:

"(a) Compensation shall be payable under this chapter in respect of disability or death of an employee, but only if the disability or death results from an injury occurring upon the navigable waters of the United States (including any adjoining pier, wharf, dry dock, terminal, building way, marine railway, or other adjoining area customarily used by an employer in loading, unloading, repairing or building a vessel)." (emphasis supplied) 33 U.S.C.A. 903.

The 1972 Amendments to the LHWCA mention *nothing* which could be construed as extending admiralty jurisdiction in an action against a non-employer to cover a land-based casualty. The Act's coverage has been extended *only* with regard to compensation claims by a longshoreman or harbor worker against his employer. "The intent of the committee is to permit a *uniform compensation system* to apply to employees who would otherwise be covered by this Act for part of their activity." (emphasis system) 1972 U.S. Code Cong. and Adm. News, pp. 4707-4708.

Coppolino v. International Terminal Operating Company, Inc., 1974 A.M.C. 2422 (U.S. Dept. of Labor, Benefits Review Board, 1974) is clearly distinguishable from this case as that matter dealt solely with a claim for compensation under

the 1972 Amendments to the LHWCA. In addition, the question of constitutionality with regard to the coverage of the Act vis-a-vis the longshoreman's employer is totally irrelevant in this case involving tort claims against non-employers.

Petitioner next contends that the 1972 Amendment to §905(b) of the LHWCA requires the Court to recognize admiralty jurisdiction over this case. The amendment to this section provides for an action against the vessel or its owners for negligence allegedly causing a longshoreman's injuries. However, the amendments do not extend admiralty jurisdiction landward with regard to such actions. The committee contemplated that the third-party action for which the 1972 amendments provide would be brought by a longshoreman injured *while working on a vessel in navigation* and stated in its Report:

"The purpose of the amendments is to place an employee *injured aboard a vessel* in the same position he would be if he were injured in non-maritime employment ashore, insofar as bringing a third-party damage action is concerned, and not to endow him with any special maritime theory of liability or cause of action under whatever judicial nomenclature it may be called, such as 'unseaworthiness', 'non-delagable duty' or the like." (emphasis supplied) 1972 U.S. Code Cong. and Adm. News, p. 4703.

Admiralty jurisdiction has traditionally governed injuries which occur on vessels in navigation. *Executive Jet Aviation, Inc. v. City of Cleveland*, 409 U.S. 249 (1972); *THE PLYMOUTH*, 70 U.S. (3 Wall.) 20 (1866). However, we are

not concerned here with an injury aboard a vessel in navigable waters. To accept the proposition that a negligence claim against a third-party for a land-based injury should be covered by the Court's admiralty jurisdiction would be to ignore completely the legislative intent of the committee in formulating the 1972 Amendments. The Fifth Circuit correctly held below that the boundaries of maritime jurisdiction as established by such decisions as *Victory Carriers, Inc. v. Law, supra*, have not been extended to embrace third-party negligence claims as are involved here.

III.

ADMIRALTY EXTENSION ACT, 46 U.S.C. 740, DOES NOT APPLY TO THIS TYPE OF CASE

The Admiralty Extension Act is altogether inapplicable to this case. That statute states in part:

"The admiralty and maritime jurisdiction of the United States shall extend to and include all cases of damage or injury, to person or property, *caused by a vessel on navigable waters*, notwithstanding that such damage or injury be done or consummated on land." (emphasis supplied) 46 U.S.C. 740.

Petitioner points to *Hovland v. Fearnley & Eger*, 110 F. Supp. 657 (E.D. Pa. 1952), in support of his argument that his claim is cognizable in Federal Court under the Admiralty Extension Act. There, the Court held that admiralty jurisdiction could be sustained under 46 U.S.C. 740 where the vessel's personnel caused the plaintiff's injuries by permitting waste to discharge from the ship and remain on the pier

where the accident occurred. Thus, not only is *Hovland* distinguishable from this case, but Petitioner has never alleged that his injury was caused by the negligence of any personnel of any of the vessels proximate to the situs of his accident. Rather, he alleges that the source of his accident was "the defective and negligently designed, maintained and repaired" wharf which, as previously discussed, was situated entirely on land and which by no stretch of the imagination could be considered a part or appurtenance of any vessel.

IV.

JURISDICTION IS NOT ESTABLISHED UNDER
28 U.S.C. 1337

As stated above, Petitioner is not covered under § 905(b) of the 1972 Amendments to the LHWCA since he was not injured aboard a vessel. The Amendments provide for an action against the owner of the vessel which is the situs of an injury to one entitled to sue under §905(b) as contemplated by the Committee. Petitioner was allegedly injured on a land-based wharf and consequently is not afforded the right to bring a third-party action for negligence under the 1972 Amendments to the LHWCA. It is therefore irrelevant whether the LHWCA comes within the scope of 28 U.S.C. 1337, which Parker claims establishes jurisdiction in this case. 28 U.S.C. 1337 is clearly inapplicable to an action such as this.

CONCLUSION

For the foregoing reasons, those stated by other Respondents, and those relied upon by both Courts below, Respondent Serrette respectfully submits that the judgments of the

United States District Court for the Eastern District of Louisiana and the United States Court of Appeals for the Fifth Circuit are correct in all respects and prays that the petition for writ of certiorari be denied.

Respectfully submitted:

WINSTON EDWARD RICE,
Trial Attorney
1300 Hibernia Bank Building
New Orleans, Louisiana 70112
Telephone: 529-1311

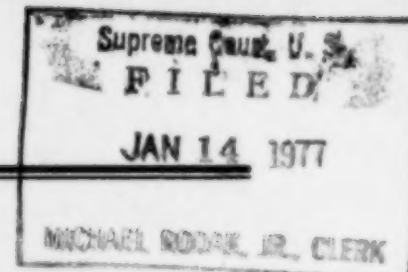
and

PHELPS, DUNBAR, MARKS,
CLAVERIE & SIMS
Attorneys for Respondent H. J.
Serrette

CERTIFICATE OF SERVICE

I hereby certify that a copy of the above and foregoing brief has been forwarded to all counsel of record by depositing same in the United States Mail, properly addressed and postage prepaid, this 4th day of February, 1977.

WINSTON EDWARD RICE



**In the
Supreme Court of the United States**

OCTOBER TERM, 1976

NO. 76 - 654

ROBERT LEE PARKER,
Petitioner

versus

**SOUTH LOUISIANA CONTRACTORS, INC., SOLOCO
PIPELINE CONTRACTORS, INC., MARTIN EXPLORATION
CORPORATION and H. J. SERRETTE**
Respondents

**REPLY BRIEF ON BEHALF OF SOUTH LOUISIANA
CONTRACTORS, INC. and SOLOCO PIPELINE
CONTRACTORS, INC., RESPONDENTS**

**DONALD L. KING of JONES, WALKER,
WAECHTER, POITEVENT, CARRERE
& DENEGRE**
225 Baronne Street - 28th Floor
New Orleans, Louisiana 70112

**ATTORNEYS FOR RESPONDENTS -
SOUTH LOUISIANA CONTRACTORS,
INC., and SOLOCO PIPELINE
CONTRACTORS, INC.**

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IN THE
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H. J. SERRETTE,
Respondents

REPLY BRIEF ON BEHALF OF SOUTH LOUISIANA
CONTRACTORS, INC. and SOLOCO PIPELINE
CONTRACTORS, INC., RESPONDENTS

Petitioner Robert Lee Parker has filed a petition for certiorari from the judgment and decision of the Fifth Circuit Court of Appeals August 16, 1976, affirming the summary judgment of the United States District Court, Eastern District of Louisiana, in favor of respondents. A petition for rehearing and a petition for rehearing en banc was filed by petitioner and denied September 17, 1976.

The petitioner has stated that a conflict exists between the United States Courts of Appeal for the First and Fifth Circuits, and that there is jurisdiction in the federal courts on the following bases: (1) admiralty and general maritime law under 28 USC §1333; (2) the Admiralty Extension Act, 46 USC § 740; (3) the 1972 Amendments to the LHWCA; and (4) 28 USC §1337, which confers jurisdiction in civil actions arising under Acts of Congress regulating commerce.

The facts as found by the Fifth Circuit Court of Appeals and contained in its opinion are as follows:

"At the time of the accident, Parker was employed as a truck driver by Atlas Truck Lines, Inc. On August 5, 1974, he was instructed to deliver a truckload of pipecasing to Martin Exploration Corporation at the Butte-LaRose landing on the Atchafalaya River. From there, he and the truck he was driving were transported by barge to another landing on the east bank of the Atchafalaya in Iberville Parish, Louisiana, near an oil well drilling site located on land. After arriving there late at night, Parker was to drive his truck off the barge along a steel ramp designed for the loading and unloading of overland vehicles. The ramp, which weighed several tons, rested on land and had an apron extending over the water's edge which could be raised and lowered by winches to permit ingress and egress from docking barges. Before driving his truck off the barge, Parker walked along the ramp, a board road, and beyond, reconnoitering the route toward the drilling site. On his way back to the barge, he overheard members of the barge's crew saying that one of the winches was stuck. In the process of walking across the ramp to render assistance, he slipped in the unilluminated gap that ran longitudinally along the center of the ramp and suffered a severe injury to his right foot and other injuries complained of in this litigation." 537 F. 2d 113, 114-115(5 Cir. 1976).

ALLEGED CONFLICT BETWEEN THE FIRST AND FIFTH CIRCUITS

Petitioner has alleged there is a conflict between the First and Fifth Circuits as to whether an accident occurring on a ramp gives rise to admiralty and general maritime jurisdiction under 28 USC 1333. Petitioner cites the case of *Reyes v. Maritime Enterprises, Inc.*, 494 F.2d 866 (1st Cir., 1974) as creating the conflict in the two circuits. Petitioner is completely incorrect in this assertion. The *Reyes* case, *supra*, involved a small movable gangway suspended from the tower on the pier, which was the regular means of boarding ship. The Court held it was a gangway, and part of the vessel's equipment. This is completely unlike the present case, as the structure involved is not a gangway at all, and so held by the Fifth Circuit, but a large metal ramp mounted on land and weighing several tons and used to drive vehicles on to barges from shore and vice versa. The photographs in evidence in this case clearly reflect the structure to be fully resting on land and supported by land, and without a doubt an extension of land, and in no way equipment of a vessel.

The Fifth Circuit correctly held that the structure on which petitioner was injured most closely resembled a dock or pier, and therefore did not come within the admiralty jurisdiction, stating at page 116 as follows:

"Since Parker's accident thus occurred on a land-based structure most closely resembling a dock or pier, we conclude that his claim does not come within admiralty jurisdiction under the principles reiterated in *Victory Carriers* regarding extensions of land."

The decision of the Fifth Circuit is completely consistent with prior clear and established principles set out by this Honorable Court.

In *Victory Carriers, Inc. v. Law*, 404 U.S. 202, 30 L.Ed. 383, 92 S. Ct. 418 (S. Ct. Dec. 13, 1971), the Supreme Court held that maritime law was not applicable to an injury suffered by a longshoreman on the dock by allegedly defective equipment owned and operated by his stevedore employer. The Court stated at pages 387 and 388 of 30 L.Ed. 2d as follows:

"... as Mr. Justice Story remarked long ago:

'In regard to torts I have always understood, that the jurisdiction of the admiralty is exclusively dependent upon the locality of the act. The admiralty has not, and never (I believe) deliberately claimed to have any jurisdiction over torts, except such as are maritime torts, that is, such as are committed on the high seas, or on waters within the ebb and flow of the tide.' *Thomas v. Lane*, 23 F. Cas 957, 960 (No. 13,902) (CC Me 1813)

The view has been constantly reiterated."

.....

"But, accidents on land were not within the maritime jurisdiction as historically construed by this Court. Piers and docks were consistently deemed [404 US 207] extensions of land; . . ."

In *Rodrigue v. Aetna Casualty & Surety Co.*, 395 U.S. 352, 23 L.Ed. 360, 89 S.Ct. 1835, the Supreme Court held that the Death on the High Seas Act was inapplicable to accidents involving a Louisiana offshore platform. The *Rodrigue* case involved the death of two workers, Dore and Rodrigue, involving permanent offshore platforms. The facts of the *Dore* case are noteworthy, and the Court stated at page 363 of 23 L.Ed. 2d as follows:

"In the *Dore* case, the decedent was working on a crane mounted on the artificial island and being used to unload a barge. As the crane lifted a load from the barge to place it on the artificial island, the crane collapsed and toppled over onto the barge, killing the worker."

.....

"The suit was brought under the 'General Maritime Laws, the Death on the High Seas Act, . . . Article 2315 of the [Louisiana Code] and under the other laws of the United States and the State of Louisiana.' "

The Court further stated in the *Rodrigue* case that admiralty jurisdiction has not been construed to extend to accidents on piers, jetties, bridges, or even ramps or railways running into the sea. This is stated at page 366 of the opinion:

"Admiralty jurisdiction has not been construed to extend to accidents on piers, jetties, bridges, or even ramps or railways running into the sea."

Therefore, under well established legal principles, there would not be any admiralty jurisdiction of accidents occurring on "ramps or railways running into the sea". Even if the ramp in question is not considered analogous to a dock or pier, it is certainly a ramp such that under the *Rodrigue* case, *supra*, there would be no admiralty jurisdiction.

It is undisputed that petitioner was located on the ramp and was walking from one side of the ramp to the other at a location on the ramp between the grating areas at the time of the accident. Furthermore, the petitioner did not fall off the ramp, and did not fall into the water, but remained on the ramp in the area between the two sections or tracks of the ramp.

Even if the petitioner had fallen off the edge of the ramp which is over the water, into the water, there would still be no admiralty jurisdiction, and Louisiana law would still apply. This was so held in *Bible v. Chevron Oil Co.*, 460 F. 2d 1218 (5th Cir. 1972) which involved a platform in Louisiana territorial waters. The Court held at pages 1219 and 1220 of the opinion:

"Bible was injured when he was pulled off the drilling platform by a defective winch apparatus, striking a platform support beam before falling several more feet into the sea. Since the substance and consummation of the occurrence giving rise to the injuries sustained took place on the drilling platform, the fact that Bible ultimately wound up in the drink does not transform this 'land based' injury into a maritime injury. See *T. Smith & Sons v. Taylor*, 1928, 276 U.S. 179, 48 S.Ct. 228, 72 L.Ed. 520; *Bertrand v. Forest*

Corp., 5 Cir. 1971, 441 F.2d 809, cert. denied, 1971, 404 U.S. 863, 92 S.Ct. 106, 30 L.Ed. 2d 107; *LaLande v. Gulf Oil Corp.*, W.D.La. 1970, 317 F.Supp. 692. Cf. *Pure Oil Co. v. Snipes*, 5 Cir. 1961, 293 F.2d 60, 1961 A.M.C. 1651. Bible does not seriously argue to the contrary. The District Court was clearly correct in determining this to be a nonmaritime tort."

There is no doubt but that in the present case, the substance and consummation of the occurrence giving rise to the injury sustained took place on the ramp.

The Fifth Circuit pointed out in footnote 3, page 115 of its opinion, the decision of *Executive Jet Aviation, Inc. v. City of Cleveland*, 409 U.S. 249, 93 S.Ct. 493, 34 L.Ed. 2d 454 (1972). In that case this Honorable Court held that a wrong must "bear a significant relationship to traditional maritime activity" in addition to complying with the established "locality" test, in order for admiralty jurisdiction to attach. The Fifth Circuit went on to point out that the effect of this was to make the test for admiralty jurisdiction even more stringent than it was under the locality test alone.

Therefore, it is clear both from the factual and legal standpoints that there is in fact no split, or conflict in the Circuits and that the Fifth Circuit has complied with and followed the jurisdictional test as set out by this Honorable Court, and that the result in the instant case was in fact, and in law, compelled by the prior decisions of this Honorable Court.

THE 1972 AMENDMENTS TO THE LONGSHORE ACT DID NOT EXPAND ADMIRALTY AND MARITIME JURISDICTION, NOR DID THEY LEGISLATIVELY OVERRULE

THE SUPREME COURT DECISION OF VICTORY CARRIERS, INC. V. LAW, 404 U.S. 202 (1971)

Petitioner incorrectly states that if he is subject to the Longshoremen and Harbor Workers' Compensation Act, under the expanded coverage of 33 USC 903(a), there is automatic expanded admiralty jurisdiction as to any tort he alleges occurred. This of course is incorrect. The USL merely provides a compensation remedy between the employee and his employer. Petitioner's employer is not a party to these proceedings. Furthermore, it could not be as petitioner's remedy in compensation is an administrative proceeding.

The 1972 Longshore amendments clearly cover persons on land engaged in the building of new vessels, but this certainly does not mean that if a third party negligently injures a person on land building a vessel, that there is admiralty jurisdiction by the injured employee working on land against the tortfeasor.

A review of the legislative history in no way reflects any intent to expand the admiralty and maritime jurisdiction nor does it in any way reflect any intent to overrule the case of *Victory Carriers, Inc. v. Law, supra*.

The Fifth Circuit opinion at pages 116-118 contains a complete discussion of the 1972 Longshore Act amendments in this regard and correctly determines that the boundaries of maritime jurisdiction were neither expanded or constricted by the passage of the 1972 amendments, but simply retained. Therefore, petitioner's attempted reliance on the 1972 Longshore amendments expanding admiralty and maritime jurisdiction regarding tort actions, is completely misplaced.

THE ADMIRALTY EXTENSION ACT, 46 USC 740 IS CLEARLY NOT APPLICABLE

The Admiralty Extension Act permits admiralty jurisdiction in situations in which damage or injury to persons or property is "caused by a vessel on navigable water, notwithstanding that such damage or injury be done or consummated on land."

Therefore, the tort must be perpetrated from a vessel, and consummated on land, i.e., when a vessel strikes a wharf or a bridge, or other shoreside facility. The steel ramp in question was resting on land and was in no way floating, could not be floated, and could not in any way be considered a vessel. Both the substance and the consummation of the occurrence giving rise to the injury in the present case took place on the ramp. Therefore, any allegation of jurisdiction under the Admiralty Extension Act is without substance or merit.

THERE IS NO JURISDICTION UNDER 28 USC 1337 WHICH PROVIDES FOR JURISDICTION ARISING UNDER ACTS OF CONGRESS REGULATING COMMERCE OR PROTECTING TRADE AND COMMERCE AGAINST RESTRAINTS AND MONOPOLIES.

The petitioner states that the Longshoremen and Harbor Workers' Compensation Act and most particularly the Jones Act, dictate that the present case should come under this statute. Firstly, the petitioner is in no way claiming in these proceedings any claim against his employer under the Longshoremen and Harbor Workers' Compensation Act, or under the Jones Act, 46 USC 688, which gives seamen the right to sue their employer for negligence. As a matter of fact, the petitioner's employer is not a party to these proceedings. Indeed, the petitioner's employer could not be a party to these proceedings as any claim petitioner has against his employer, if it would be under the USL as petitioner states, would be an administrative proceeding, and not this suit.

The Longshore Act, 33 USC 905(b) merely preserves an injured worker's right to claim against third parties in accordance with non-statutory negligence principles, and could not be the basis for section 1337. This is particularly so, since any such non-statutory negligence claim against a third party would in no way arise under any "Act of Congress regulating commerce or protecting trade and commerce against restraints and monopolies."

CONCLUSION

Because of the foregoing, it is submitted that the decision of the Fifth Circuit is correct in all respects, both factually and legally, and the petition for writ of certiorari should be denied.

Respectfully submitted,

DONALD L. KING, of Jones, Walker,
Waechter, Poitevent, Carrere & Denegre
225 Baronne Street, 28th Floor
New Orleans, La. 70112 (504) 581-6641
Attorneys for Respondents South Louisi-
and Contractors, Inc. and Soloco
Pipeline Contractors, Inc.

CERTIFICATE

I hereby certify that a copy of the above and foregoing reply brief has been forwarded to all counsel of record by depositing same in the U.S. Mail, postage prepaid, addressed to their offices, this 13th day of January, 1977.

DONALD L. KING